

PART 5301--FEDERAL ACQUISITION REGULATIONS SYSTEM

SUBPART 5301.90--CLEARANCE PROCESS

contract implementing the negotiated business arrangement.

5301.9000 Scope and applicability.

(a) This subpart establishes business clearance and contract clearance requirements for Major Programs, Selected Programs, and Other Programs (see 5302.101). Any supplements to this subpart that apply to Major, Selected or Other Programs must comply with 5301.9006-6.

(b) Clearance requirements for Other Contracting (see 5302.101) and for all sealed bidding actions are prescribed in major command FAR supplements. Major commands shall use the policy (5301.9001), definitions (5301.9002), standards (5301.9004 and 5301.9005), and application (5301.9006-3 and 5301.9006-4) in this subpart. Beyond this common baseline, however, major commands may prescribe internal clearance procedures for Other Contracting that meet the individual command's needs.

5301.9001 Policy. The objectives of the Air Force clearance process are to ensure that --

(a) Solicitations effectively implement approved acquisition strategies;

(b) Negotiation objectives represent fair and reasonable business arrangements and are consistent with law and regulation;

(c) Negotiated contract prices, terms, and conditions conform to approved business clearance parameters;

(d) Contracts clearly reflect the complete agreement of the parties and are consistent with laws, regulations and policies; and

(e) Air Force management is provided feedback on the operation of its contracting system, implementation of contracting policies, and the quality of contract actions, allowing management to foster continuous process improvement.

5301.9002 Definitions. (a) "Business Clearance" means --

(1) For competitive acquisitions, approval to--

(i) Award without discussions; or

(ii) Request Best and Final Offers (BAFOs) in accordance with FAR 15.611; and

(2) For noncompetitive acquisitions, approval to begin negotiations.

(b) "Contract Clearance" means authorization to award a

(c) "Review" means analysis of records pertaining to the action for which approval is requested to ensure that the proposed action meets applicable standards established in 5301.9004 or 5301.9005. The review is performed by competent individuals on the staff of the Business Clearance Reviewing Authority (BCRA) or Contract Clearance Approval Authority (CCAA), and involves reviewer interaction with contracting and other program office personnel. As used in this subpart, "review" does not include staff consultation (e.g., in-process review of unique terms and conditions for the purpose of providing advice) obtained in the course of preparing contractual documents.

(d) "Request for RFP Review" (RRR) means the document (Figure 1-A) prepared by the contracting officer to obtain RFP Review.

(e) "Request for Business Clearance" (RBC) means the document (Figure 1-B) prepared by the contracting officer to obtain business clearance.

(f) "Request for Contract Clearance" (RCC) means the document (Figure 1-C) prepared by the contracting officer to obtain contract clearance.

(g) "Competitive acquisition" means any action that does not meet the definition in this subpart of "noncompetitive acquisition". Examples of competitive acquisitions include procurements using (i) full and open competition, (ii) competitive procedures (see FAR 6.102) used to fulfill the requirements of full and open competition; and (iii) statutory authorities for other than full and open competition (see FAR Subpart 6.3), when more than one offer was received.

(h) "Noncompetitive acquisition" means a "sole source acquisition", as that term is defined in FAR 6.003. Examples include procurements (i) using the authority of FAR 6.302-6 to negotiate with only one source; (ii) conducted on a sole source basis to continue or add to a specific program previously competed, where the "follow-on" procurement was necessitated by prior acquisition decisions; and (iii) modifications negotiated on a sole source basis even if the contractor was awarded the basic contract as a result of competition.

(i) "Begin negotiations" means, for the purpose of noncompetitive acquisitions, starting discussions with an offeror for the purpose of reaching agreement on all aspects of the proposal, including terms and conditions and the pricing arrangement. A contracting officer is not considered to "begin negotiations" if the contracting officer obtains audits and performs factfinding necessary to evaluate the proposal(s) and develop the government's negotiation objective(s).

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5301.9003 Roles and responsibilities.

5301.9003-1 General. The effectiveness and efficiency of the clearance process depends on each participant performing the roles specified in 5301.9003-2 below and accepting associated responsibilities.

5301.9003-2 Specific.

(a) Service Acquisition Executive (ASAF(A)). The SAE, who is also the Senior Procurement Executive (SPE) --

- (1) Establishes and maintains the clearance process;
- (2) Uses the process as a system of internal controls, which serves as a basis for the annual certification of the Air Force procurement system required by E.O. 12352;
- (3) Obtains feedback on the operation of the process; and
- (4) Directs actions to ensure the process achieves its objectives and is subject to continuous process improvement.

(b) Deputy Assistant Secretary (Contracting) (SAF/AQC). SAF/AQC --

- (1) Implements ASAF(A) direction, prescribing the clearance process through this subpart;
- (2) Facilitates and monitors Air Force-wide operation of the process;
- (3) Establishes and maintains the feedback system;
- (4) Periodically assesses the policies and thresholds for review and approval requirements; and
- (5) Makes recommendations to ASAF(A).

(c) Approving Authority. Approving authority delegations are at 5301.9006-5. The approving authority shall --

- (1) Ensure the objectives stated in 5301.9001 are achieved in each action approved; and
- (2) Consider the request for business clearance consistent with 5301.9009 and, if the request meets established standards, approve the request by signing a business clearance in the format prescribed by Figure 1-D; or
- (3) Consider the request for contract clearance consistent with 5301.9012 and, if the request meets established

standards, approve the request by signing a contract clearance in the format prescribed by Figure 1-E.

(d) Business Clearance Reviewing Authority (BCRA). Reviewing authority delegations are at 5301.9006-5. The reviewing authority shall--

- (1) Be the primary staff advisor to the approving authority with regard to the specific request for business clearance and ensure that the approving authority has all information needed to make an informed decision; and
- (2) Review each Request for Business Clearance (RBC) and supporting source documents to ensure the action for which clearance is requested meets the standards established in 5301.9004. If standards are not met, the reviewing authority shall identify the deficiencies, assist in resolution, and advise the approving authority as appropriate.

(e) Contracting Officer. The contracting officer is--

- (1) A member of the program manager's team in planning the acquisition and managing its contractual aspects;
- (2) The leader of the team responsible for negotiating the contract price, terms and conditions, consistent with FAR 15.803(c);
- (3) The individual responsible for requesting business clearance and contract clearance, consistent with this supplement; and
- (4) The agent of the United States Government authorized to enter into contracts (see FAR 1.602-1).

(f) Major Commands.

(1) Implementing the clearance process. The major command headquarters shall implement the clearance process for Major, Selected and Other Programs (see 5302.101) by--

(i) Performing the RFP reviews and functioning as the business clearance reviewing authority and contract clearance approving authority. In AFMC, the headquarters will provide clearance support to the PEOs and DACs in accordance with Table I;

(ii) Ensuring field activities have the contracting resources needed to--

(A) Survey the market, solicit proposals, evaluate and negotiate proposals, and award contracts; and

(B) Maintain functional expertise to provide

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informed advice and assistance to contracting officers;

(iii) Ensuring the staff views its role as facilitating the award of contracts that satisfy user needs and effectively implement program management directives;

(iv) Ensuring that staff advice and assistance, and clearances are consistent with laws, regulations, and policies; and

(v) Ensuring FAR Supplements regarding the clearance process comply with 5301.9006-6.

(2) In AFMC, the SCCO and the BOCO will provide clearance support in accordance with Table I.

(3) Delegated authorities. Delegation of clearance authorities to major commands is established in 5301.9006-5.

5301.9004 Business clearance standards.

(a) In competitive acquisitions, each RBC, together with supporting source documents, must establish that--

(1) All evaluation, negotiation, and contractual issues have been resolved;

(2) The contract (to be awarded without discussions or to accompany the request for BAFO) is sound; and

(3) The contemplated action complies with laws, regulations, and policies.

(b) In noncompetitive acquisitions, each RBC, together with supporting source documents, must clearly establish that --

(1) The negotiation objectives represent a fair and reasonable business arrangement in terms of both price and contract terms and conditions; and

(2) The contemplated business arrangement complies with laws, regulations, and policies.

5301.9005 Contract clearance standards. (a) In competitive acquisitions, each RCC, together with supporting source documents, must establish--

(1) The exceptional circumstances (5301.9012-1(b)) or issues necessitating the clearance; and

(2) Provide convincing evidence that the exceptional cir-

cumstances or issues have been resolved in a manner consistent with laws, regulations and policies.

(b) In noncompetitive acquisitions, each RCC, together with supporting source documents, must clearly establish that--

(1) The negotiation achieved approved objectives in terms of both price and contract terms and conditions, or, where this is not the case, the departure from the approved objective is necessary, prudent, and well documented in the contract file; and

(2) The resulting contractual action reflects the negotiated agreement and is consistent with laws, regulations, and policies.

5301.9006 General requirements.

5301.9006-1 Review and approval thresholds. The clearance process applies to all actions described in 5301.9006-3 below. The approving and reviewing authorities for any given action are based on the type of program (Major, Selected or Other), type of action (development/production or support/sustainment), and the dollar value (see 5301.9006-5 and Table I).

5301.9006-2 Resolving disagreements. There may occasionally be a disagreement among participants on some aspect of a business clearance or contract clearance. This may involve the reviewing authority and approving authority addressing a given request for business clearance. It may also occur when the program manager or contracting officer disagrees with the approving authority for a business clearance or contract clearance. In the event of such a disagreement, the matter shall be promptly elevated for resolution. If not resolved at a lower level, the matter will be decided by ASAF(A).

5301.9006-3 Contract actions requiring review and approval.

(a) The contract actions identified below require business clearance and, if noncompetitive, contract clearance.

(1) An action intended to result in award of a negotiated contract or modification of any contract. Actions that create an undefinitized contractual action (UCA), undefinitized change order, or undefinitized long lead contract are excluded (see 5317.74 for UCA approval authorities).

(2) An action intended to result in definitization of a UCA, an undefinitized change order, or an undefinitized long lead contract, or in the pricing of (i) an unpriced

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option or an option with only a not-to-exceed price, (ii) provisioned items orders (PIOs), or (iii) unpriced orders under Basic Ordering Agreements.

(3) An action intended to result in issuance of a modification implementing a unilateral price determination.

(4) Priced orders issued under Basic Ordering Agreements.

(5) An action intended to result in the exercise of an option when the option exercise is not in strict accordance with the previously approved pricing arrangement or other contract terms and conditions.

(6) Other individual actions, as specified by the ASAF(A).

(b) Requirements shall not be broken down into more than one purchase transaction for the purpose of avoiding requirements for business clearance or contract clearance at a higher echelon.

(c) For Major, Selected, and Other Program contract actions identified in paragraph (a) that have a dollar value less than \$5,000,000—

(1) BOCOs may delegate RFP Review responsibility, BCRA and CCA to a level no lower than the Contracting Officer;

(2) PEOs/DACs/SPDs may delegate Business Clearance Approval Authority (BCAA) below the SSM/DSM level. However, delegation may be no lower than the Contracting Officer or an equivalent level in the program management chain.

(3) The formal procedures in 5301.9007 through 5301.9012 may be waived by the approval authority. However, the objectives of the clearance process apply to contract actions below \$5,000,000.

5301.9006-4 Determining the value of contract actions.

(a) The thresholds in Table I apply to the sum of the value of the basic portion of the instant acquisition plus--

(1) Any options (including those that are priced only on a not-to-exceed basis);

(2) Sums reserved for provisioning; and

(3) The value of contingencies, such as ceilings, award fee and performance incentives.

(b) For example, the following actions would exceed a threshold of \$50 million:

(1) A basic \$49 million contract for a system, with an additional \$1.5 million obligated or specifically committed for provisioning.

(2) Basic contract for \$45 million with an option for \$10 million.

(3) FPIF contract with target price of \$47 million and ceiling of \$52 million.

(4) A multiyear contract where the value of the first program year is \$15 million, and the value of all program years is \$60 million.

(c) The "value" of modifications implementing both increases and decreases to the contract price is the sum of the absolute values of the increases and decreases and not the net amount. For example, an increase of \$45 million and a decrease of \$10 million would give the modification a "value" of \$55 million.

(d) An action, whether or not considered to be within the general scope of the contract, that significantly alters (e.g., restructures or rephases) the contract, or any action in which the resolution of claims is a significant part of the consideration for a revised delivery schedule or reduced requirements, shall be considered to have the value of the contract being modified and shall be subject to approval by the same level of authority that would be required to award the contract being modified.

5301.9006-5 Delegation of clearance approval authority.

For Major, Selected and Other Programs (see 5302.101), the ASAF(A) delegates business clearance and contract clearance approval authority through SAF/AQC—

(a) Within AFMC, to the individuals occupying the positions designated as reviewing or approving authorities in Table I for programs assigned to PEOs or DACs. These authorities may not be redelegated, except as specifically indicated in Table I or as follows:

(1) Where Table I designates "AFMC/PK" as the reviewing authority or contract clearance approving authority, this authority may be exercised by the Director of Contracting, the Deputy Director of Contracting, or the Deputy Director for Program Support and Business Clearance.

(2) The BCRA and CCAA for development/production

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actions under \$100,000,000 and support/sustainment actions under \$50,000,000 will be the Senior Center Contracting Official (SCCO) or Buying Office Contracting Official (BOCO) where the contracting is actually being accomplished, even if the System Program Director is located elsewhere.

(3) The SCCO at SMC may redelegate Table I authorities vested in them to Deputy for Contracting at the Ballistic Missile Organization (BMO/PK) for Major or

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actions under \$100,000,000 and support/sustainment actions under \$50,000,000 will be the Senior Center Contracting Official (SCCO) or Buying Office Contracting Official (BOCO) where the contracting is actually being accomplished, even if the System Program Director is located elsewhere.

(3) The SCCO at SMC may redelegate Table I authorities to the Deputy for Contracting at SMC Det 10 for Major or Selected Programs assigned to a PEO. The SCCO at SMC is authorized to designate SMC Det 10/PK as a BOCO for Other Programs.

(4) When clearance authority is delegated by letter, modify the wording in paragraph 1 of the clearance document shown in Figure 1-D or 1-E, as appropriate. For example, if AFMC/PK delegates contract clearance then the clearance document should read substantially as follows:

"As the contract clearance approving authority delegated by AFMC/PK letter dated _____, I hereby approve the referenced (b) request."

(b) For PEO programs managed outside AFMC, the business clearance approving authority will be the PEO. The business clearance reviewing authority and the contract clearance approving authority for these programs will be the major command director of contracting; and

(c) To the commanders of major commands identified in DFARS 202.1 and FOAs, and DRUs in AFFARS 5301.601-91 for any programs within their purview and not included in (a) above. This includes the authority to establish business clearance approving and reviewing authorities and contract clearance approving authorities.

(d) Commanders of Procuring Activities identified in 5306.304(a)(2)(i) not specifically delegated authority in (a) thru (c) above, but who have a need for clearance authority, shall submit a request for such authority to the Deputy Assistant Secretary (Contracting), SAF/AQC.

5301.9006-6 Clearance requirements established by major commands and suborganizations.

(a) Any clearance procedures for Major, Selected or Other Programs established by major commands or suborganizations shall —

(1) Provide an independent assessment of proposed contractual actions and enable local management to achieve the objectives of the clearance process stated in 5301.9001;

(2) Be consistent with 5301.9007 through 5301.9012; and

(3) Require that the BCRA for a given contractual action normally be established as the RFP reviewer and CCAA.

(b) All command and suborganization FAR supplements regarding the clearance process are subject to review by SAF/AQC.

5301.9006-7 Relationship between the business clearance and source selection processes. In competitive acquisitions, the business clearance process occurs during the course of the on-going source selection process. The following relationships apply:

(a) The source selection authority (SSA) performs the role and responsibilities of the business clearance approving authority, except when ASAF(A) is the source selection authority for a Major or Selected Program acquisition. In those cases, the SSAC Chairperson, normally the PEO, shall be the business clearance approving authority, unless the SSA specifies otherwise.

(b) Business clearance is a necessary step leading to the source selection authority's decision to either (1) issue a request for Best and Final Offer (BAFO), or (2) award without discussions.

(c) The business clearance process is completed prior to the related source selection event (e.g., briefing to the SSA in the case of award without discussions) or decision (e.g., SSA approval to end discussions and issue the request for BAFO).

5301.9006-8 Post-award Review. All acquisitions are subject to post-award review of the resulting contract(s). The reviewing authority shall perform post-award reviews for the purposes of evaluating and continuously improving processes and policies, using a representative sampling of field contracting actions. Only documents specifically requested by the reviewing authority must be submitted for post-award review.

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5301.9006-9 USD(A&T) Review of Request for Proposals and Contracts.

(a) USD(A&T) may require review of RFPs and contracts for ACAT ID programs (see DoDI 5000.2) in demonstration/validation, engineering and manufacturing development, or initial production phase prior to release/award or announcing the selected offerer(s). For purposes of USD(A&T) review, Initial Production means first LRIP buy only. For these programs, the PEO/DAC shall notify SAF/AQC, with an informational copy to HQ AFMC/PK, not later than forty-five days prior to scheduled RFP release, announcement of selected offerer(s), or contract award. The following information shall be provided:

(1) Program Name.

(2) Brief program description, including current phase.

(3) A description of the planned acquisition action, including estimated dollar value and the type (CPAF, CPIF, FPIF, etc.) of contract. Describe any options that are included and their pricing arrangements including contract type and whether firmly priced or NTE.

(4) Provide the planned date for the action, and if that date is critical, the program impact if it is not completed on time.

(5) In sole source or follow-on actions or down-selects in which the competitors are publicly known, provide the contractor(s) name(s).

(b) Within five days of receiving the PEO's/DAC's notification, SAF/AQCS will notify USD(A&T) of the pending action and request a determination if a review is desired.

(c) For those actions selected by USD(A&T) for review, SAF/AQCS will notify the PEO/DAC and AFMC/PK. Once an action is identified for review, the RFP/contract (including the statement of work and specification) shall simultaneously be submitted to AFMC/PK and SAF/AQCS for review. After receipt of the documents for review AFMC/PK and SAF/AQCS will normally have up to 15 working days to complete their review. AFMC/PK will act as the single focal point to coordinate issues/comments with the appropriate SPO. The simultaneous SAF/AQCS and AFMC/PK reviews shall be to (1) give these organizations an opportunity to become familiar with the RFP/Contract in order to relay or answer USD(A&T) questions and (2) identify potential USD(A&T) policy issues relevant to the instant RFP/Contract.

(d) If an action is selected for review, the PEO should revise the acquisition schedule as appropriate. The RFP or contract, when approved for release by the PEO, shall be submitted to SAF/AQCS in three copies.

5301.9007 Solicitation review.

(a) All solicitations must be reviewed if the resulting contract action is expected to require business clearance in accordance with 5301.9006-3. The reviewing authority for the contemplated business clearance shall be the reviewing authority for the RFP, except as prescribed in Table I for noncompetitive acquisitions. Table I prescribes the reviewing authority for RFPs, both competitive and noncompetitive, by type of program, type of action and dollar value of action.

(b) The contracting officer shall send the Request for RFP Review in the format presented in Figure 1-A, with the RFP and supporting file to the reviewing authority before issuance or concurrent with issuance, at the contracting officer's option. When time permits, the contracting officer should send the RFP before issuance, so feedback can be incorporated without amending the solicitation.

(c) The RFP reviewing authority is responsible for ensuring that the solicitation implements the approved acquisition strategy and that its terms and conditions are sound. The Contracting Officer shall use best efforts to implement recommendations, provide additional data and resolve matters as much as possible with the reviewing authority. In the event issues cannot be resolved, either the reviewing or approving authority may raise the issue to SAF/AQ for resolution. (See 5301.9006-2).

5301.9008 Content of the Request for Business Clearance (RBC).

(a) RBC Format and Content. The RBC shall contain information in the format presented in Figure 1-B.

(b) Related Documents. The contracting officer shall provide the following documents, as applicable, with the RBC. (In Major or Selected Program competitive acquisitions, these documents will normally be retained for on-site review by the reviewing authority's staff (See 5301.9009(c)(1)).

(1) The Request for Proposals, including any amendments;

(2) The preliminary Price Negotiation Memorandum

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(PNM), prepared in accordance with FAR 15.808, as supplemented, to the extent required information is available prior to beginning negotiations. For example, for the purpose of FAR 15.808(a)(8), the preliminary PNM will include a description of the (i) proposed position, (ii) field pricing recommendations; and (iii) government's negotiation objective. The preliminary PNM will not include the considered negotiated position. However, when the RBC requests approval to award without discussions, it will be supported by a complete "final" PNM. The preliminary PNM is not required in RBCs requesting approval to issue a request for BAFOs;

(3) The proposed request for BAFOs, including the cover letter, the proposed contract, and any other attachments referred to in the cover letter;

(4) Determination of adequate price competition, in accordance with FAR 15.804-3(a)(1) and (b), and supporting documentation;

(5) The official contract file, including all applicable items in the Contract File Content Checklist (AF Form 3019). This file shall include technical evaluations, evidence of legal review (AF Form 3059), as otherwise required, DCAA audit reports, any other field pricing reports, and the should cost results, if applicable;

(6) The offeror(s)' proposal(s). When requesting approval to award without discussions, only the proposal(s) of the successful offeror(s) must normally be submitted. If the proposal is voluminous, consult the reviewing authority's staff for guidance on what portions of the proposal to submit; and

(7) In competitive acquisitions (see 5301.9006-7), the following source selection documentation:

(i) Source Selection Plans.

(ii) Competitive range determinations.

(iii) If requesting clearance to award without discussions, a written statement by the SSEB chairperson (or equivalent) that the SSEB intends, having the concurrence of the contracting officer and the SSAC chairperson (or equivalent), to convene the SSAC for the purpose of recommending award without discussions.

(8) Business clearance charts in accordance with 5301.9010-5 and 5301.9010-6.

5301.9009 Business clearance procedures for competitive and noncompetitive acquisitions.

(a) The contracting officer shall prepare a Request for Business Clearance (RBC) in accordance with 5301.9008.

(1) In competitive acquisitions, the RBC constitutes the contracting officer's request for approval to --

(i) Proceed to award without discussions; or

(ii) Request Best and Final Offers.

(2) In noncompetitive acquisitions, the RBC constitutes the contracting officer's request for--

(i) approval of negotiation objectives, and

(ii) authority to begin negotiations with the contractor.

(b) The contracting officer shall send the RBC to the reviewing authority. For Major and Selected Program competitive acquisitions, the RBC's related documents should be retained on-site pending arrival of the reviewing authority's staff. The contracting officer will normally schedule seven working days for the review and keep the reviewing authorities staff advised of the source selection schedule so that travel arrangements can be made and the review expeditiously accomplished.

(1) When requesting approval to award without discussions, send the RBC --

(i) After the SSEB (or equivalent), with the concurrence of the contracting officer and the SSAC chairperson (or equivalent), has decided to convene the SSAC and to recommend award without discussions; and

(ii) Before the SSAC Analysis Report (or equivalent) is finalized. (The references to source selection groups and documentation are based on AFFARS Appendix AA. Equivalence can be determined by referring to AFFARS Appendix BB or to FAR 15.6, as supplemented.)

(2) When requesting approval to issue a request for BAFO, send the RBC after concluding written or oral discussions. The preliminary PNM (5301.9008(b)(2)) does not apply.

(c) The reviewing authority shall take the following actions:

(1) Review the RBC in accordance with 5301.9003-2(d)(2). (For Major or Selected Program competitive actions, the reviewing authority's staff shall normally conduct its review on site at the contracting activity.)

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(2) Discuss with the contracting officer any elements that do not meet the standards in 5301.9004, and provide advice on how they can be corrected. Their mutual objective is to refine the RBC package so that both the reviewing authority and the contracting officer consider it to meet the standards before the RBC is presented to the approving authority. If the contracting officer provides additional information or changes that correct the deficiencies, the reviewing authority shall incorporate those corrections into the RBC.

(3) Notify the contracting officer if a business clearance session is required. (See 5301.9010).

(4) When a business clearance session is not required, either discuss the action with the approving authority or provide written advice to the approving authority in accordance with 5301.9003-2(d), and prepare a proposed business clearance (see Figure 1-D) for the approving authority's signature.

(d) In deciding how to respond to the RBC, the approving authority shall use the RBC, the reviewing authority's analysis of the RBC and all related documents, and, when a business clearance session is held, any additional insight provided during the session. Consistent with 5301.9003-2(c)(ii), the approving authority shall decide to approve the RBC, approve it with conditions, or disapprove it.

(1) The decision to approve the RBC shall be documented by the approving authority signing a business clearance (see Figure 1-D). In noncompetitive acquisitions, the approving authority may specify a range for the overall government objective and for specific elements.

(2) The decision to approve the RBC with conditions shall be documented by the approving authority signing a business clearance that enumerates the conditions that must be met before the contracting officer proceeds with the requested action.

(3) The decision to disapprove the RBC shall be documented by the approving authority signing a letter to the contracting officer that--

(i) Cites the RBC;

(ii) States that the RBC is disapproved;

(iii) Establishes a date by which a revised RBC must be submitted; and

(iv) Identifies the issues that must be resolved before

the revised RBC is submitted.

(e) AFFARS 5301.9006-2 applies.

(f) If the business clearance document states conditions, the contracting officer shall not proceed with the requested action until all conditions have been met. The contracting officer shall document in the contract file the specific actions taken to satisfy each condition.

(g) In noncompetitive acquisitions, no further communication with the business clearance reviewing and approving authorities is required, unless there is a need for a substantial change from the approved clearance.

(1) If there is doubt as to whether a revised clearance is needed, contact the reviewing authority's staff. Examples of changes that would require approval, include--

(i) A change in contract type;

(ii) A major change in the quantity or the nature of what the government is buying; and

(iii) A major change of a contract term or condition (e.g., a warranty), if that term or condition was considered critical by the BCAA when the RBC was approved.

(2) In order to reach settlement on price, the Government may have to make an offer or agree to a price outside the range specified in the business clearance document (see 5301.9009(d)(1)). In such cases, the contracting activity shall obtain revised clearance from the reviewing and approving authorities.

(3) If a revised clearance is needed, the contracting officer, through and with the advice of the business clearance reviewing authority, shall, as appropriate --

(i) Request approval by telephone. The approving authority's staff shall confirm the results in writing to the contracting officer, who shall include it in the official contract file;

(ii) Submit a contracting officer letter describing the changes and requesting approval of the revision; or

(iii) Submit a revised RBC.

5301.9010 Business clearance session procedures.

5301.9010-1 Applicability.

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(a) For competitive acquisitions, a business clearance session, co-chaired by the approving and reviewing authorities, will be convened with the concurrence of both the reviewing and approving authority. It is not required in competitive acquisitions in which award is made without discussions, because the findings of the reviewing authority will be presented by the contracting officer to the SSAC (or equivalent) when it convenes to consider the SSEB recommendation to award without discussions. It is not normally required in competitive acquisitions with discussions, unless specifically requested by the reviewing or approving authority.

(b) For noncompetitive acquisitions, the reviewing or approving authority will decide if a business clearance session is necessary based upon the need for an in-depth joint review of specific negotiation issues by both the reviewing and the approving authority. To assist the reviewing and approving authority in determining the need for a clearance session, the contracting officer will include business clearance session charts (in accordance with 5301.9010-5(b)) in the request for business clearance package. The PCO and support personnel shall be available to discuss the RBC package, including the briefing charts, with the BCRA.

5301.9010-2 Scheduling.

(a) The business clearance session shall take place after the reviewing authority has completed the actions required by 5301.9009(c)(1) and (2).

(b) The reviewing authority, in coordination with the contracting officer, shall decide how much time to schedule for the session. The length depends on the complexity of the contract action, and the number and complexity of the issues that need to be discussed.

(c) The reviewing authority shall schedule the session. Once it is on the approving authority's calendar, the reviewing authority shall inform the contracting officer of the date and time.

5301.9010-3 Negotiation team preparation. Concurrent with submitting the RBC, the contracting officer shall begin to coordinate the negotiation team's efforts to prepare for the session. Preparation includes:

(a) Arranging for appropriate people to attend. Attendance should be limited to the session chairpersons; their selected staff members, if any; the program manager; and members of the negotiation team to include legal counsel when appropriate. The contracting officer shall provide the list of attendees in advance to the reviewing authority's staff.

(b) Ensuring that the contracting officer, together with accompanying members of the negotiating team, have a complete grasp of the RBC and all associated issues, and are fully prepared to discuss them during and after the briefing.

5301.9010-4 Session agenda.

(a) Introductions.

(b) Briefing by the negotiation team to the chairpersons.

(c) Open discussion of issues not fully discussed or resolved during the course of the briefing.

(d) Approving authority's remarks. (The approving authority may or may not make a decision on the RBC during the session.)

5301.9010-5 Briefing requirements for noncompetitive acquisitions.

(a) Purpose. The session provides a forum for full and open discussion of the contract action that is the subject of the RBC. It allows the members of the Air Force Negotiation Team (AFNT) to present their plans and to discuss any concerns one-on-one with the reviewing and approving authorities. This communication ensures --

(1) Line management (the approving authority) has an opportunity to (i) have the contract action explained by the AFNT; (ii) discuss problems or controversial issues that will be subject to negotiation; and (iii) obtain any additional information desired prior to deciding how to respond to the RBC; and

(2) The contracting officer (i) has first hand knowledge of the reviewing and approving authorities' positions on major negotiation issues; and (ii) takes a complete understanding of line management's interests, concerns and support into the next stage of the negotiation process.

(b) Content. The negotiation team's briefing shall include the following information.

(1) Members of negotiation team.

(2) Overview and status of user needs, program direction, and Acquisition Plan.

(3) Description of what we are buying, including a picture of the item, if possible. List specific items to be bought or tasks to be performed. Clearly differentiate between basic contract requirements and options.

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(4) Negotiation objectives. The objectives are the negotiating team's true goals, i.e., the agreements the team hopes to have upon concluding negotiations. These do not represent "going-in positions" (covered under (5) "Negotiation strategy and tactics," below). For each item discussed, present the contractor's proposed position and the objective, and identify any anticipated negotiation problems or issues. Identify the negotiation team's approach to dealing with each of the following—

(i) Requirements and technical approach, including delivery schedule or period of performance;

(ii) Financial terms and conditions. Examples include when major deliverables are to be accepted; any payment arrangements other than those provided by standard FAR clauses; funding limitations; and indemnification clauses;

(iii) Other terms and conditions. Examples include data rights agreements, product warranties, conflict of interest clauses;

(iv) Pricing Information.

(A) Prior purchase history.

(B) Major task or item prices.

(C) Major cost elements. Address significant contract audit or field pricing recommendations not accepted by the negotiation team.

(D) Profit or fee.

(E) Incentive arrangement(s). Explain specific Government objectives and demonstrate how the incentive structure was developed to achieve those objectives. For the contract type pricing arrangement (e.g., FPIF), use graphs to illustrate the cost/profit relationship embodied in the contractor's proposal and the government's objective. Where other incentives are being used (e.g., performance incentives, schedule incentives, or award fee), describe any required or implicit interrelationships among the incentives and be prepared to provide examples of how they will operate in foreseeable situations.

(F) Other pricing terms and conditions, such as economic price adjustment clauses and pricing adjustment agreements (sometimes referred to as savings clauses), which call for a price adjustment, if certain events occur.

(5) Negotiation strategy and tactics.

(i) Pressures on the Air Force and the contractor.

(ii) Negotiation schedule and agenda.

(iii) "Going-in" positions on major negotiation issues.

5301.9010-6 Briefing requirements for competitive acquisitions.

(a) Purpose. The session provides a forum for full and open discussion of the competitive acquisition. It allows line management (the approving authority) to-- (i) ensure the integrity of the competitive process has been maintained, (ii) discuss any unresolved issues, and how the contracting officer plans to resolve them in the request for BAFOs, and (iii) understand the extent to which terms and conditions have been finalized with each offeror prior to requesting BAFOs and, as a corollary, which terms and conditions remain subject to change by the BAFOs.

(b) Content. The negotiation team's briefing shall include the following information.

(1) The information required by 5301.9010-5(b)(1), (2), and (3).

(2) A description of any changes to the following elements of the solicitation's model contract based on proposals or discussions:

(i) Requirements and technical approach, including delivery schedule or period of performance.

(ii) Terms and conditions, as described in 5301.9010-5(b)(4)(ii) through (iv), above.

(iii) Pricing expectations, including contract type, major task or item prices, profit or fee percentages, and incentive arrangements. (Include any pertinent prior purchase history or assumptions underlying these expectations.)

(3) A summary of the evaluation process. Discuss--

(i) RFP Section M approach.

(ii) Scope and seriousness of clarification requests and deficiency reports (as defined in AFFA R S Appendix AA, or equivalent). (This should include exceptions taken by the offeror(s) to the model contract's terms and conditions.)

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(iii) Each unresolved deficiency report on offerors remaining in the competitive range, and the negotiation team's recommendation for resolving it.

(iv) Each unique provision proposed by an offeror that requires special approval (e.g., a one-time deviation to the FAR or one of its supplements). If the approval has not yet been obtained, explain why and provide status of the request for approval.

(v) The realism of cost/price proposals. If adequate price competition was anticipated, the contracting officer's assessment with regard to whether it will be obtained.

(4) An outline of the request for BAFOs.

(i) Time allowed for submission of BAFOs.

(ii) Which terms and conditions have been finalized with each offeror, and which remain subject to change by the BAFOs.

(iii) How the request for BAFOs deals with any unresolved deficiency reports.

5301.9011 Content of the Request for Contract Clearance (RCC).

(a) RCC Format and Content. The RCC for noncompetitive acquisitions shall contain information in the format presented in Figure 1-C. In those exceptional cases when an RCC is necessary for a competitive acquisition, the contracting officer shall consult the reviewing authority's staff to determine what to include in the RCC.

(b) Related Documents. The contracting officer shall submit the following documents with the RCC for a noncompetitive acquisition:

(1) The negotiated contract document, bearing the contractor's signature and otherwise ready for signature by the contracting officer;

(2) The final Price Negotiation Memorandum. This document must satisfy the requirements of FAR 15.808, as supplemented. It must incorporate the unchanged preliminary PNM, which accurately describes the proposed and objective positions as of the time of the business clearance. Any revised proposals or revised objectives occurring after the business clearance document was signed must be described in the body of the final PNM. The final PNM may incorporate the preliminary PNM content into

an integrated, single document. An acceptable alternative is for the body of the final PNM to (i) refer to the preliminary PNM as an attachment, and then (ii) provide all other information required to constitute a complete PNM meeting the requirements of FAR 15.808, as supplemented.

(3) The official contract file, including all applicable items in the Contract File Content Checklist (AF Form 3019). For noncompetitive actions for which the contract clearance approving authority was the business clearance reviewing authority, the contracting officer may provide an abbreviated file containing only the following documents:

(i) The Certificate of Current Cost or Pricing Data.

(ii) A copy of each audit or field pricing report not included or considered in the Request for Business Clearance.

(iii) Funding documents (e.g., certified Procurement Request or Administrative Commitment Document).

(iv) Legal review (AF Form 3059).

(v) The DD Form 350, Individual Procurement Action Report.

5301.9012 Contract clearance procedures.**5301.9012-1 Competitive acquisitions.**

(a) Contract clearance is not required for competitive acquisitions, unless requested by the contracting officer or directed by the BCRA.

(b) Reasons for requesting or directing the contract clearance include (but are not limited to) situations in which—

(1) Expected adequate price competition is not obtained;

(2) Significant issues remain unresolved after receipt and evaluation of BAFOs;

(3) One or more offerors introduce a significant change in the BAFO, either to the anticipated pricing arrangement or to contract terms and conditions; and

(4) There are procurement integrity concerns or the potential for debarment or suspension.

(c) The contracting officer shall request contract clearance by submitting a RCC (see 5301.9011(a)) to the CCAA. By

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submitting the RCC, the contracting officer is requesting assistance in resolving the matter(s) that necessitated the contract clearance, and approval to award the proposed contract.

5301.9012-2 Noncompetitive acquisitions.

(a) After concluding negotiations and reaching agreement with the contractor, the contracting officer shall prepare a RCC in accordance with 5301.9011.

(b) The contracting officer shall submit the RCC and all related documents to the CCAA, and in so doing request approval to award the proposed contract, which implements the negotiated business arrangement.

5301.9012-3 Contract clearance approving authority.

(a) The CCAA shall take the following actions—

(1) Review the RCC in accordance with 5301.9003-2(c)(3);

(2) Discuss with the contracting officer any elements that do not meet the standards in 5301.9005. All deficiencies should be corrected before the approving authority makes a decision on the RCC;

(3) Assist the contracting officer in resolving any matters that necessitated the Competitive Acquisition RCC;

(4) Consistent with 5301.9003-2(c)(1) and (3), approve, approved with conditions, or disapprove the RCC.

(i) The decision to approve the RCC shall be documented by the approving authority signing a contract clearance.

(ii) The decision to approve the RCC with conditions shall be documented by the approving authority signing a contract clearance that enumerates the conditions that must be met before the contracting officer proceeds with the requested action.

(iii) The decision to disapprove the RCC shall be documented by the approving authority signing a letter to the contracting officer that--

(A) Cites the RCC;

(B) States that the RCC is disapproved;

(C) Establishes a date by which a revised RCC must be submitted; and

(D) Identifies the issues that must be resolved before the revised RCC is submitted.

(b) AFFARS 5301.9006-2 applies.

5301.9012-4 Contracting Officer. The contracting officer shall not sign the contract until the contract clearance is received. If the contract clearance document states any conditions, the contracting officer shall not proceed with the requested action until all conditions have been met. The contracting officer shall document for the contract file the specific actions taken to satisfy each condition.